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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Section 73.202(b),  
FM Table of Allotments,  
FM Broadcast Stations.  
(Aspen and Leadville, Colorado)

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MB Docket No. 05-184

To: Office of the Secretary, to forward to Assistant Chief, Audio Division, Media Bureau

~~COMMENT~~ <sup>DOCKET</sup> FILE COPY ORIGINAL

Jacor Broadcasting of Colorado, Inc. ("JBC"), the licensee of KTCL(FM), Wheat Ridge, Colorado, 1/ by its attorneys, hereby submits these Comments in MB Docket No. 05-184, in response to the *Notice of Proposed Rulemaking*, DA 05-1299, released on May 9, 2005, by the Assistant Chief, Audio Division, Media Bureau (the "NPRM").

It the *NPRM*, the Audio Division, on its own motion, proposed the removal of two vacant allotments, Channel 228A at Aspen, Colorado, and Channel 228A at Leadville, Colorado. The Division stated in the *NPRM* that these allotments are not in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules to each other, and that there are no alternative channels available to resolve the existing conflict between the allotments. The *NPRM* invited interested parties to file comments expressing an

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1/ Pursuant to the *Report and Order* in MB Docket 03-57, JBC's license to operate KTCL(FM) was modified to specify operation on Channel 227C0 at Wheat Ridge, Colorado, conditioned on submission of a minor change application within 90 days of the effective date. *See Report and Order, Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 18 FCC Rcd 4461 at ¶ 8 (Media Bur. 2003). Such minor change application was timely filed. *See* FCC File No. BPH-20040721ALZ.

interest in the vacant allotments to prevent removal. Moreover, the *NPRM* advised that if interest is expressed for both allotments, a comparison will be based on the allotment criteria for FM allotment priorities.

JBC hereby expresses its interest in applying for a new construction permit on Channel 228A at Aspen, Colorado, as set forth in the attached declaration. Consequently, the Commission should not delete this allotment and should set it for auction.

Even if an expression of interest is submitted also for Channel 228A at Leadville, Colorado, no comparison between the Aspen and Leadville allotments need or should be made because the Leadville allotment is not viable, as discussed below.

By way of background, as noted in the *NPRM*, Channel 228A at Leadville, Colorado, was a vacant allotment that resulted from the cancellation of the KRMH-FM license in 1997. Notwithstanding that, until auctions were authorized, any interested party could have filed a "first come/first serve" application following the cancellation, Channel 228A at Leadville remained vacant. At some point after 1997, Channel 228A at Leadville was deleted by the Division from the FCC database, and in reliance on that deletion, several actions were undertaken by the Commission. The omission of Channel 228A, Leadville from the FCC database, and the reliance by both the Media Bureau and parties in several subsequent actions on that omission, led to the *de facto* modification of the FM Table of Allotments, effectively removing Channel 228A, Leadville, Colorado from the Table.

Such subsequent actions included MM Docket No. 00-215, the Channel 228A, Aspen, Colorado allotment proceeding. Pursuant to a petition for rulemaking filed in October 2000 showing that the proposed Channel 228A allotment at Aspen was fully spaced, the Bureau issued a *Notice of Proposed Rulemaking* in MM Docket No. 00-215 proposing the

requested Aspen channel. 2/ In its February 2001 *Report and Order* in MM Docket No. 00-215, the Bureau stated: "A staff engineering analysis of the community shows that Channel 228A can be allotted at Aspen. Channel 228A can be allotted at Aspen consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules without a site restriction." 3/ Consequently, the MM Docket No. 00-215 *Report and Order* amended the FM Table of Allotments to add Channel 228A as Aspen's third commercial FM service. 4/ There was no reconsideration, review or appeal of the *Report and Order* in MM Docket 00-215, and, consequently, the action became a "final order."

Likewise, in MB Docket No. 03-57 (application for review pending), no issue was raised at the *Notice of Proposed Rulemaking* 5/ or *Report and Order* 6/ or *Memorandum Opinion and Order* 7/ stages by either the Bureau or any commenting party that the adopted Channel 227C0 allotment at Wheat Ridge, Colorado, had any potential short-spacing with the

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2/ 15 FCC Rcd 25554 (Med. Bur. 2000).

3/ 16 FCC Rcd 3541 at ¶ 2 (Med. Bur. 2001).

4/ *Id.* at ¶¶ 3-5.

5/ 18 FCC Rcd 4461 (Med.Bur. 2003).

6/ 19 FCC Rcd 4821 (Med.Bur. 2004). The Bureau stated in the *Report and Order* in MB Docket No. 03-57: "Based upon the information presented in this proceeding, we believe the public would be served by the substitution of Channel 227C0 for Channel 227C and reallocation of Channel 227C0 from Fort Collins, Colorado, to Wheat Ridge, Colorado, since it will provide Wheat Ridge with a first local service. To accommodate the allotment at Wheat Ridge, we shall also substitute Channel 249A for vacant Channel 227A at Westcliffe, Colorado..... A staff engineering analysis verifies that the requested reallocations can be made in compliance with the Commission's spacing requirements." *Id.* at ¶ 5.

7/ 19 FCC Rcd 15317 (Med. Bur. 2004).

effectively-deleted Channel 228A Leadville allotment. To the contrary, the Bureau stated that “[a] staff engineering analysis verifies that the requested reallocations can be made in compliance with the Commission’s spacing requirements.” 8/

Yet again, the deletion of Channel 228A at Leadville from the Commission database, and thereby its *de facto* deletion from the Table of Allotments, allowed the Bureau, pursuant to final orders, to grant a mutually-exclusive construction permit, File No. BPH-20010718AAY, and covering license, File No. BLH-20020828AAQ, for Station KSBV(FM) (Facility Id No. 87873) on Channel 229C2 at Salida, Colorado. Station KSBV(FM) is an operating station, providing on-going service to its community of license. As set forth in the attached Technical Statement, Channel 228A at Leadville is mutually exclusive with the KSBV(FM) license, there are no channels available for KSBV(FM) to change to from its licensed transmitter site that would permit operation of a Leadville station on Channel 228A; and consequently, there is no longer a feasible allocation site for Channel 228A at Leadville.

Given the Bureau’s final actions authorizing the licensed and operating KSBV(FM) facility on Channel 229C2 at Salida, Colorado, the Channel 228A allotment at Leadville is no longer technically feasible. Administrative consistency requires the protection of the KSBV(FM) facility and other subsequent actions taken in reliance on the Bureau’s *de facto* amendment of the FM Table of Allotments. Furthermore, in light of these actions, it would be unjust to attempt at this late date to accommodate any new interest in a Leadville allotment when no interest was shown when the allotment lay vacant and available for a first come/first serve application.

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8/ 19 FCC Rcd 4821 at ¶ 5.

In sum, Channel 228A at Leadville, Colorado, is no longer technically feasible, and on that basis alone, the Bureau should formally delete it from the FM Table of Allotments. Such action is consistent with the Commission's recent statement in its *Notice of Proposed Rule Making* in MB Docket No. 05-210 that it does not rule out the need to delete some allotments from the FM Table of Allotments due to lack of viability. 9/

While the Leadville allotment should be formally removed from the FM Table of Allotments because it is technically incapable of effectuation and to be consistent with the Bureau's *de facto* action, assuming *arguendo* that it would be appropriate to compare the Leadville allotment with the Aspen allotment, on those grounds, Aspen should prevail and the mutually-exclusive Leadville allotment should be deleted. As noted in the *NPRM*, Aspen, Colorado is a city with a 2000 U.S. Census population of 5,914 persons, and three other local transmission services besides Channel 228A. 10/ Leadville is a community with a 2000 U.S. Census population of 2,821 persons, and has one other channel, noncommercial educational Channel 218A. 11/ Aspen, as the larger community, is more deserving of an additional service than Leadville. 12/ Not only is Aspen's population larger, but with four Aspen stations, there

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9/ *Revision of Procedures Governing Amendments To FM Table of Allotments and Changes Of Community of License in the Radio Broadcast Services*, FCC 05-120 at ¶ 11 (rel. Jun. 14, 2005)

10/ *NPRM* at ¶ 2.

11/ *Id.* at ¶ 3. Moreover, there is a pending application for a second noncommercial education station serving Leadville, on Channel 214, File No. BPED-19990329MC.

12/ *Accord Blanchard, Louisiana and Stephens, Arkansas*, 10 FCC Rcd 9828 (1995) (determining factor when comparing first transmission service proposals is the population of the respective communities).

would be one station for each 1,478.5 persons, while a second Leadville station would result in one station for each 1,410.5 persons, thereby comparatively underserving Aspen.

Moreover, any comparison should compare not just Leadville against Aspen, but Leadville against the mutually-exclusive Aspen and Wheat Ridge allotments and the mutually-exclusive KSBV(FM), Salida license. Channel 227C0 at Wheat Ridge provides a first local transmission service to that community, and on that basis alone, is preferred over a second service to Leadville. <sup>13/</sup> The disruption to existing service to Salida to accommodate a long vacant allotment at Leadville further tips the scales dispositively against Leadville.

In sum, the Division should formally delete Channel 228A at Leadville, Colorado, from the FM Table of Allotments, consistent with its de facto deletion of that channel years ago. Channel 228A at Leadville is no longer technically feasible. Although such comparison is not necessary, even if it were compared to mutually-exclusive uses of the spectrum, the Leadville allotment is outweighed by the superior public service benefits of those other uses.

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<sup>13/</sup> The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).]. See *Second Report and Order* in BC Docket 80-130, *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1982).

Respectfully submitted,

**JACOR BROADCASTING OF  
COLORADO, INC.**

By: Marissa G. Repp  
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June 30, 2005

Jacor Broadcasting of Colorado, Inc.  
Technical Statement  
June 30, 2005

This statement is in support of Comments in MB Docket No. 05-184, in response to the *Notice of Proposed Rulemaking*, DA 05-1299, released on May 9, 2005, by the Assistant Chief, Audio Division, Media Bureau (the "NPRM").

The allocation for Channel 228A at Leadville, Colorado (Leadville) is mutually exclusive with the allocation for station KSBV(FM), Channel 229C2 at Salida, Colorado. Station KSBV is licensed to serve the community of Salida, Colorado, the station having been licensed on January 30, 2001. KSBV was granted renewal of its license in March of 2005. Attached as Figure 1 is a tabular spacing study which demonstrates that a 13.6 kilometer short spacing exists between KSBV and the Leadville allotment; Figure 2 is a graphical representation of this short spacing. A study of all commercial channels has revealed that no alternative channel is available for KSBV at the licensed KSBV transmitter site. In addition to the short-spacing to KSBV, the Leadville allotment is short-spaced to Channel 228A at Aspen, Colorado, KTCL, Channel 227C0 at Wheat Ridge, Colorado, as well as the licensed KTCL facility at Fort Collins, Colorado. The table attached as Figure 3 demonstrates these short spacings which are graphically represented in Figure 4.

Respectfully submitted,



Troy G. Langham  
FCC Engineering Supervisor  
Clear Channel Communications

Figure 1

# KSBV Licensed Site Allocation Study

ComStudy 2.2 search of channel 229 (93.7 MHz Class C2) at 38-26-47.0 N, 106-00-37.0 W.

Callsign	State	City	Freq	Chan	ERP_w	Class	Status	Dist_km	Sep	Clr
DKIIQ <sup>1</sup>	CO	LIMON	93.7	229	0	C	RSV	209.38	249	-39.6
	CO	LEADVILLE	93.5	228	0	A	DEL	92.4	106	-13.6
KILO	CO	COLORADO SPRINGS	94.3	232	82000	C	LIC	105.41	105	0.4
KILO	CO	COLORADO SPRINGS	94.3	232	0	C	USE	105.41	105	0.4
	CO	ASPEN	93.5	228	0	A	DEL	108.35	106	2.3
KALQ-FM	CO	ALAMOSA	93.5	228	2800	A	LIC	109	106	3
KALQ-FM	CO	ALAMOSA	93.5	228	0	A	USE	109	106	3
	CO	ASPEN	93.5	228	0	A	APP	108.35	106	2.3
	CO	WESTCLIFFE	93.3	227	0	A	APP	58.49	55	3.5
	CO	WESTCLIFFE	93.3	227	0	A	DEL	58.49	55	3.5
KYSL	CO	FRISCO	93.9	230	560	A	LIC	123.53	106	17.5
KYSL	CO	FRISCO	93.9	230	0	A	USE	123.53	106	17.5
DK228CP	CO	GARFIELD	93.5	228	72	D	LIC	27.53	0	27.5
KKXK	CO	MONTROSE	94.1	231	90000	C	LIC	142.87	105	37.9
KKXK	CO	MONTROSE	94.1	231	0	C	USE	142.87	105	37.9

<sup>1</sup> Limon is allocated 229A. This record for class "C" at Limon was made in a "one-step" application to amend BMPH-20020823AAR that was denied. This defective record is not depicted in Figure 2.

Figure 2

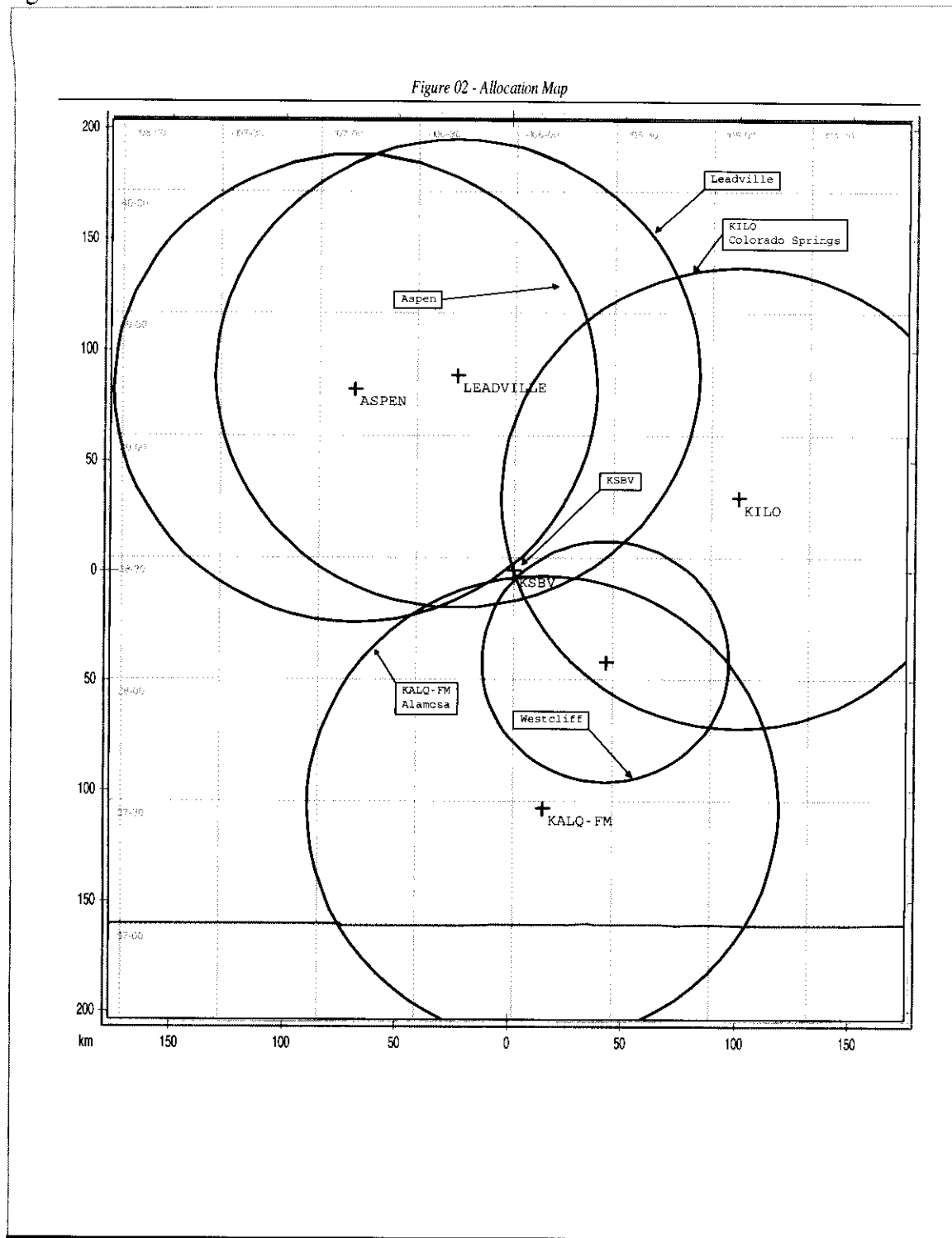


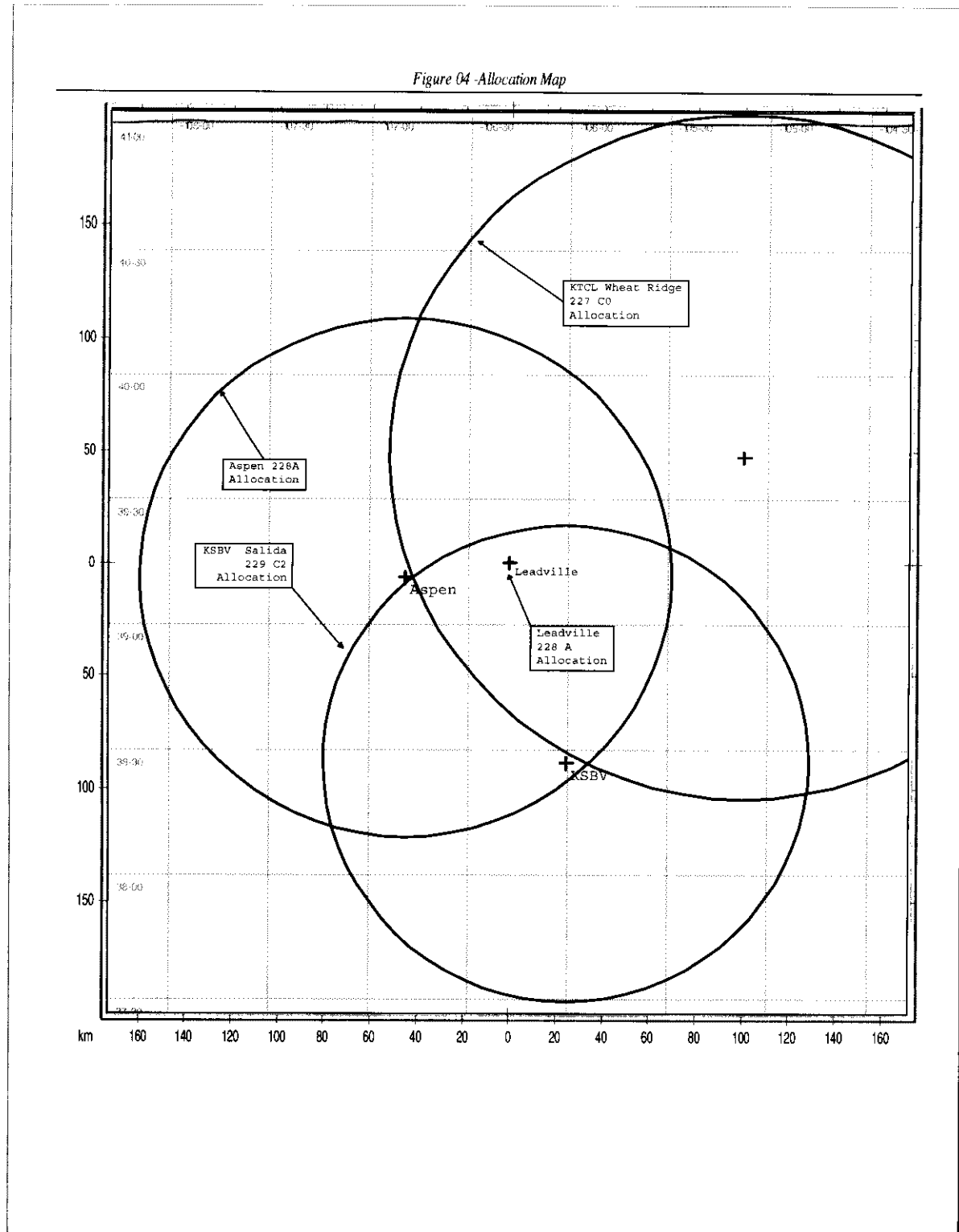
Figure 3

Channel 228A Leadville, Colorado Allotment Coordinates Allocation Study

ComStudy 2.2 search of channel 228 (93.5 MHz Class A) at 39-14-51.0 N, 106-17-57.0 W.

Callsign	State	City	Freq	Chnl	ERP_w	Class	Status	Dist_km	Sep	Clr
	CO	ASPEN	93.5	228	0	A	APP	45.29	115	-69.7
KTCL	CO	WHEAT RIDGE	93.3	227	27500	C1	APP	106.16	133	-26.8
KSBV	CO	SALIDA	93.7	229	1000	C2	LIC	92.4	106	-13.6
	CO	FORT COLLINS	93.3	227	0	C	DEL	152.55	165	-12.4
KTCL	CO	FORT COLLINS	93.3	227	100000	C	LIC	152.55	165	-12.4
KYSL	CO	FRISCO	93.9	230	560	A	LIC	37.77	31	6.8
KYSL	CO	FRISCO	93.9	230	0	A	USE	37.77	31	6.8
KTCL	CO	FORT COLLINS	93.3	227	0	C	USE	172.55	165	7.5

Figure 4

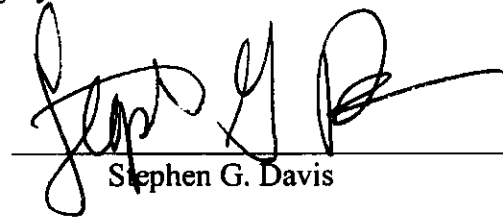


## DECLARATION

I, Stephen G. Davis, declare as follows:

1. I am Senior Vice President - Engineering & Capital Management of Jacor Broadcasting of Colorado, Inc. ("JBC").
2. JBC intends to apply for a construction permit for a new station to operate on Channel 228A at Aspen, Colorado, if such channel is made available pursuant to an auction proceeding.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate.



Stephen G. Davis

## Certificate of Service

I, Regina Hogan, hereby certify that on this 30<sup>th</sup> day of June, 2005, a copy of the foregoing **Comments** was sent by hand-delivery to:

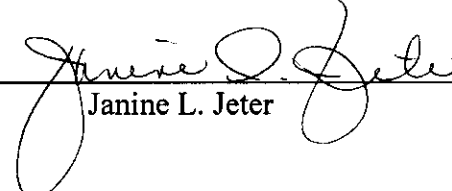
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